SIKKIM

GOVERNMENT GAZETTE

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GOVERNMENT OF SIKKIM
LAND REVENUE & DISASTER MANAGEMENT DEPARTMENT
GANGTOK – 737101

No.209/957/LR & DMD(S) **Dated : 17.02.2011**

NOTIFICATION

In exercise of the powers conferred by section 19 of the Sikkim Public Demands Recovery Act, 2006 (14 of 2006) the State Government hereby makes the following rules, namely :-

Short title and commencement 1. (1) These Rules may be called the Sikkim Public Demands Recovery Rules, 2011.

(2) They shall come into force at once.

Defination 2. (1) In this Act, unless there is anything repugnant in the subject or Context:-

(a) "Act" means the Sikkim Public Demands Recovery Act 2006.

(b) "Certificate-debtor" means the person named as debtor in a certificate filed under the Act and includes any person whose name is substituted or added as debtor by the Certificate Officer;

(c) "Certificate Officer" means the Collector of the District and includes any other officer appointed by State Government, by notification, to perform the functions of a Certificate Officer under the Act.

(d) "Moveable property" includes growing crops:

(e) "Notification" means a notification published in the Official Gazette:

(f) "Public Demand" means any money payable to or any liabilities (inclusive of interest), which is claimed as due from any person by the State Government or to a department or any Corporation or Company of the State Bank of Sikkim or any local authority, under any law for the time being in force or under a written agreement with the above authorities or institution or instrument or any decree or award of any court or Authority Competent to adjudicate the claims.

(2) Words and expressions used herein and defined in the Act shall have the meaning respectively assigned to them in the Act.

Presentation of application Form, content and particulars of the application

3. (1) Any person desirous of recovering a public demand shall submit an application to the Certificate Officer having jurisdiction and such application may be presented eitherm in person or through registered post with acknowledgement due.

(2) The application mentioned in sub-rule(1) shall contain the details of the amounts due, and shall be supported by all necessary documents to substantiate the recovery of the public demand.

(3) Every such application shall be filed along with as many number of copies of application and documents as there are number of certificate debtors.

(4) The application shall contain the addresses of the certificate debtors, sureties and other proper or necessary parties.

(5) In case of debts advanced or due in respect of moveable or immoveable properties, particulars such properties shall also be mentioned in the application.

(6) The applicant shall also furnish all such information which will facilitate recovery of public demand.

Register of applications

4. The Certificate Officer shall enter the gist of the application in a book to be kept for the purpose and register the application in serial number. Such entries shall be numbered every year according to the order in which the applications are received.

Notice to the Certificate Debtors

5. (1) When an application has been duly registered, a notice shall be issued to all persons indicated in the application to file their objections within 7(seven) days from the receipt of the said notices

(2) The notice shall accompany a copy of the application and copies of Documents filed along with the application.

Reply to notice

6. (1) Any person who received the notice of the application shall file a reply within 7 (seven) days from the receipt of the notice either admitting the demand or pleading discharge of the debt either wholly or partly; Provided that the Certificate Officer, if sufficient cause is shown, may extend the time not exceeding 15 (fifteen) days from the date of receipt of the notice.

(2) The reply shall accompany documents in support of his plea of discharge of either whole or part of the demand.

(3) A copy of the reply along with copies of the supporting documents, if any, shall be served upon the applicant either personally or through registered post with acknowledgement due by all persons who have been served with the notice.

Notice of enquiry

7. The Certificate Officer upon receipt of the reply shall fix a date for enquiry and issue notice of enquiry to both parties, either through personal service or by registered post with acknowledgement due or by affixing the notice on the front door of the residential houses of the parties.

Powers of the Certificate Officer

8. (1) The Certificate Officer may record evidence, or issue commissions for recording evidence or issue commissions for recording evidence and call for recording evidence if he considers necessary and relevant for the determination of the application in the capacity of a Civil Court as prescribed under section 3 of the Act (No.14 of 2006).

(2) No party has right to seek adjournment of enquiry unless it is absolutely necessary to produce a document in support of the case or a witness whose evidence is necessary for the just decision of the case and which were beyond his control to produce earlier.

(3) If either party is absent on the day fixed for hearing or on any subsequent day of hearing until the decision is rendered, the Certificate Officer shall proceed ex-parte and decide the case on merits as though the parties are present;

Provided that any party aggrieved by such a decision may file a petition to review the order and produce material in support of the case for such a review.

(4) The Certificate Officer upon being satisfied on the basis of the material so produced for review may revise his order and pass suitable orders after hearing both the parties.

(5) The Certificate Officer may decide all questions of fact and law relating to the public demand claimed in the application and his decision shall be final and binding on all parties.

Order, Certificate and Notice to pay the Certificate Debt

9. (1) The Certificate Officer shall make a brief order indicating his decision and issue a Certificate in Form I.

(2) The Certificate shall be caused to be filed in his office and issue notice upon the Certificate Debtor along with the copy of the certificate in Form II and demand payment within 7 (seven) days from the receipt of such a Notice.

Attachment of property

10. The Certificate Officer may cause attachment of moveable and immoveable properties in Form No. III, IV and V.

Sale of property

11. (1) The Certificate Officer shall issue proclamation of sale in Form VI. He shall fix an upset price for the property to be sold and also fix the date and place of public auction.

(2) The proclamation of sale shall be published by affixing the same in the premises of the property to be sold and affixing a copy on the front door of the residential house of the Certificate debtor. The Certificate Officer may publish the proclamation in any other manner if he considers it to be so necessary.

(3) On the day fixed for sale, he or his agent may sell the property by public auction.

(4) The Certificate Officer may appoint any person or a firm as agent to conduct the sale and collect the amount and incur such expenditure which is necessary for such sale.

(5) Every bidder shall make an advance deposit of 15% of the upset price so fixed before he commences his bid.

(6) For reasons recorded it shall be in the discretion of the officer conducting the sale to adjourn it to secure better price.

(7) Full amount of the purchase money shall be paid before the officer conducting the sale either on the day of the sale or within 7 (seven) days from the date of the sale as is to be fixed by the Certificate Officer.

(8) In default of payment of the purchase money within the period allowed, the property shall be re-sold after the issue of a fresh proclamation and the advance so made by him shall be forfeited.

(9) All sale under these rules shall be subject to local laws for the time being in force in the State of Sikkim.

(10) In case of sale of immoveable property the Certificate Officer shall issue a sale certificate in Form VII.

(11) In the case of sale of moveable property the sale shall be effected by the delivery of the goods to the auction purchaser.

Protection to Officer

12. No suit or other legal proceeding shall lie against a Certificate Officer for any act done or purported to have been done by him under the provisions of these rules.

B.K.Kharel, IAS
Commissioner-cum-Secretary,
Land Revenue & Disaster Management Department

Form I
(See rule 9 (1)

Certificate of Public Demand

This is to certify that Shri/Smt/Kum..... (Certificate Debtor) is liable to pay Rs..... as dues to .....(Certificate Holder) and that the said sum is recoverable as public demand.

Date:

Certificate Officer

Form II

(See rule 9 (2)

Notice to pay Certificate Debt

To

Shri/Smt/Kum.....(Certificate Debtor)

You are hereby directed to pay Rs.....
to .....(Certificate Holder) within 7(seven) days from the receipt of this notice.

A copy of the Certificate of Public Demand is enclosed herewith.

Date :

Certificate Officer

Form III

(See rule 10)

Attachment of moveable property

To

Shri/Smt/Kum.....(Certificate Debtor)

Whereas you have failed to pay the Certificate Debt you were required to pay as per the Notice dated _____issued to you. Now, therefore, it is hereby ordered that you be and hereby prohibited and restrained from transferring or charging the property specified in the Schedule given below, by sale, gift or otherwise and that all persons be and hereby prohibited from receiving the same by purchase, gift or otherwise.

Schedule

Date: Certificate Officer

Form IV

(See rule 10)

Attachment of property consisting of money

To

Shri/Smt/Kum.....(Certificate Debtor)

Whereas you have failed to pay the Certificate Debt you were required to pay as per the Notice dated .....issued to you. And whereas the Certificate Holder has applied for an attachment of money worth Rs.....available now in your hands. Now, therefore, I hereby direct you that you shall hold the said money till further orders of the undersigned.

Date:

Certificate Officer

Form V

(See rule 10)

Attachment of Immoveable property

To

Shri/Smt/Kum .....(Certificate debtor)

Whereas you have failed to pay the Certificate Debt you were required to pay as per the Notice dated .....issued to you. Now,therefore, it is hereby ordered that you be and hereby prohibited and restrained from transferring or charging the property specified in the Schedule given below, by sale gift or otherwise and that all persons be and hereby prohibited from receiving the same by purchase, gift or otherwise.

Schedule

Date:

Certificate Officer

Form VI
(See rule 11 (1)

Proclamation of Sale

Shri/Smt/Kum.....(Certificate Debtor)

Shri/Smt/Kum.....(Certificate Holder)

Notice is hereby given that the property attached by the Order dated ..... and given in the Schedule given below shall be sold for the satisfaction of the Certificate Debt.

Schedule

(1) Amount of Certificate Debt Rs.....

(2) Upset price fixed by the Certificate Officer Rs.....

(3) The above mentioned property will be sold by public auction on .,.....(Dated) at .....(Place) from 11 am onwards.

(4) At the said sale the public in general are invited to bid either personally or by duly authorized agent. No bid by or on behalf of the Certificate Debtor above mentioned, however, will be accepted nor will any sale to him be valid without the express permission of the Certificate Officer.

(5) Conditions of Sale

(i) The particulars specified in the Schedule given above have been stated to the best of the information available with the Certificate Officer and he will not be answerable for any error, mis-statement or omission in this Proclamation.

(ii) The highest bidder shall be declared to be the purchaser of the said property described in the Schedule.

(iii) Every bidder shall make an advance deposit of 15 percent of the upset price so fixed before he commences his bid.

(iv) For reasons recorded it shall be in the discretion of the officer conducting the sale to adjourn it to secure better price.

(v) Full amount of the purchase money shall be paid before the officer conducting the sale either on the day of the sale or within seven days from the date of the sale as is to be fixed by the Certificate Officer.

(vi) In default of payment of the purchase money within the period allowed, the property shall be re-sold after the issue of a fresh proclamation and the advance so made by him shall be forfeited.

(vii) All sale under these rules shall be subject to local laws for the time being in force in the State of Sikkim.

Date :

Certificate Officer

Form VII

(See rule 11 (10)

Certificate of sale of Immoveable Property

(Case No .....)

Shri/Smt/ Kum.....(Certificate Debtor)

Shri/Smt/Kum.....(Certificate Holder)

This is to certify that Shri/Smt/Kum .....has been declared to be the purchaser at a sale by public auction on the .....day of .....of the property mentioned in the Schedule given below in execution of the recovery of the public demand and that the said sale has been duly confirmed by the Certificate Officer.

Schedule

Date : Certificate Officer